



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3365]

**TUESDAY, THE TWENTY SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

FIRST APPEAL NO: 878/2016

Between:

Bommineni Venkatamma and Others **...APPELLANT(S)**

AND

P Gangamma Died and Others **...RESPONDENT(S)**

Counsel for the Appellant(S):

1. VIJAY ASHRIT
2. VIJAY ASHRIT
3. VIJAY ASHRIT
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Counsel for the Respondent(S):

1. MAHESWARA RAO KUNCHEAM
2. 5912/MAHESWARA RAO KUNCHEAM

SUBMITTED FOR APPROVAL:**THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ FIRST APPEAL NO: 878/2016

% 26.03.2024

Between:

Bommineni Venkatamma and Others **...APPELLANT(S)**

AND

P Gangamma Died and Others **...RESPONDENT(S)**

! Counsel for the Appellant(s) : Sri VIJAY ASHRIT

**^ Counsel for Respondent(S): Sri MAHESWARA RAO
KUNCHEAM**

< Gist:

> Head Note:

? Cases referred:

- 1. 2023 SCC OnLine SC 1183**
- 2. (2006) 5 SCC 353**
- 3. (2021) 15 SCC 300**

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**APPEAL SUIT No.878 of 2016****JUDGMENT:**

Defendants in the suit preferred this Appeal under Section 96 of Code of Civil Procedure (C.P.C.). Respondents herein are the plaintiffs in the suit. Appellants impugn the judgment dated 22.04.2016 of learned Senior Civil Judge, Dharmavaram in O.S.No.26 of 2012.

2. Sri Vijay Ashrith, the learned counsel for the appellants and Sri Maheswara Rao Kuncheam, the learned counsel for respondent Nos.2 to 6, submitted arguments.

3. The property in dispute is Ac.17.73 cents of land in Bathalapalli Revenue Village of Dharmavaram of Anantapur District. This land originally belonged to Sri B.Peddanna. He died intestate and his property was succeeded by his two sons by name Sri Pedda Sangappa and Sri Chinna Sangappa. Sri Pedda Sangappa died unmarried and issueless and died intestate. Sri Chinna Sangappa also died survived by his wife Venkatamma and a son by name Sri B.Nagabhushanam. Smt. Venkatamma executed a registered gift deed dated

23.09.2011 in favor of her son Nagabhushanam as per Ex.B.1 and thus, gifted the plaint schedule property to him. Within days thereafter, the donee Sri Nagabhushanam executed a registered sale deed dated 29.09.2011 as per Ex.B.2 in favour of Sri K.Chandrayudu and Sri K.Chennakesavulu. It is these transactions that gave rise to the controversy. Therefore, showing the mother and son as defendant No.1 and defendant No.2 and the two purchasers as defendant No.3 and defendant No.4, the plaintiffs filed O.S.No.26 of 2012 stating that they owned and possessed the property and their title is in cloud and therefore they prayed for declaration of their right and title over the plaint schedule property and for a consequential permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment and for costs and such other reliefs. The essence of the plaint is that Sri Pedda Sangappa and Sri Chinna Sangappa sold out Ac.4.00 cents of the plaint schedule property under a registered sale deed dated 09.06.1967 as per the original of Ex.A.3. Subsequently Sri Chinna Sangappa died survived by his wife/defendant No.1 and a minor son/defendant No.2. Sri Pedda Sangappa and defendant No.1 for herself and his natural guardian of defendant No.2 sold out the remaining extent of Ac.13.73 cents

under a registered sale deed dated 27.03.1978 as per Ex.A.4. Plaintiff further refers to the relationship among plaintiffs and the purchasers under those documents and they state that by 27.03.1978 the plaintiff schedule property was no more with Sri Pedda Sangappa and Sri Chinna Sangappa and their families and yet by creating Ex.A.5-gift deed and Ex.A.6-sale deed they wanted to grab the property and that forced them to file the suit.

4. Defendants contested stating that Exs.A.3 and A.4-sale deeds are forged and fabricated. It is further contested that by the time of Ex.A.4-sale deed dated 27.03.1978 defendant No.2 was a minor so also plaintiff No.4-Sri P.Mallikarjuna who purchased the property was also a minor and sought dismissal of the suit.

5. In the context of the above rival contentions, the trial Court settled the following issues:

1. Whether the plaintiffs are in possession and enjoyment of the plaintiff schedule property?
2. Whether the plaintiffs are entitled for declaration of their right over the plaintiff schedule property?
3. Whether the plaintiffs are entitled for permanent injunction as prayed for?

4. Whether the registered sale deeds, dt. 9.6.1967 and 27.3.1978 are true, valid and acted upon and binding on the parties to the suit?
5. To what relief, if any, is the plaintiffs entitled for?

6. At the trial, there was evidence of PWs.1 and 2 and Exs.A.1 to A.16 and DWs.1 to 3 and Exs.B.1 to B.7.

7. On considering the material on record and the contentions raised on both sides, learned trial Court agreed with the case of plaintiffs and found no merit in the contentions raised by the defendants and held that the dispute raised by the defendants with reference to Exs.A.3 and A.4—sale deeds is incorrect and accordingly it decreed the suit as prayed for. It is against that, the defendants have come up with this appeal.

8. The submission advanced on behalf of the appellants is that Sri Pedda Sangappa died on 15.03.1977 evidenced by Ex.B.7-death certificate dated 18.08.2012 and therefore he could not have executed Ex.A.4-registered sale deed dated 27.03.1978 and the learned trial Court failed to appreciate the evidence in proper perspective. It is further contended that it is only certified copy of registered sale deed dated 09.06.1967 as per Ex.A.3 that was filed by plaintiffs and they did not assign any reason as to why they did not file the original. That both

the sale deeds in Exs.A.3 and A.4 are forged documents and despite evidence led by the defendants/appellants, the trial Court erroneously concluded the suit in favour of respondents/plaintiffs and that shall be set aside.

9. As against it, the learned counsel for respondent Nos.2 to 6, submits that in the notices exchanged prior to the institution of the suit as well as in the pleadings of the defendants, they never disclosed that Sri Pedda Sangappa died on 15.03.1977 and while the suit was pending they got procured Ex.B.7-death certificate by making all false statements before the authorities and the learned trial Court paid full attention on that aspect and rightly discarded the said contention and held that there was no evidence to show that Sri Pedda Sangappa died on 15.03.1977. Learned counsel further submits that the evidence of DWs.1 to 3 indicated absence of possession of the property by them since the time of Ex.A.4-sale deed dated 27.03.1978. On the other hand, the evidence of PWs.1 and 2 and Ex.A.7-Form-1B and Ex.A.8-bunch of adangals and Ex.A.9-pattadar passbooks showed continuous possession and enjoyment of the property by the plaintiffs. Learned counsel further argued that the plaintiffs had effective control over the property and they got

the property mortgaged evidenced by Ex.A.10 dated 14.05.1974 during the lifetime of the predecessors. It was in those circumstances the learned trial Court after complete appreciation of the evidence, decreed the suit rightly and appellants cannot seek for any interference.

10. In the light of the rival submissions, the following points fall for consideration:

“1. Whether the respondents/plaintiffs through evidence failed to show Exs.A.3 and A.4-registered sale deeds are genuine documents and the learned trial Court erroneously held otherwise?

2. Whether the impugned judgment is incorrect on facts and law?”

POINT Nos.1 and 2:

11. Ex.A.3 is certified copy of registered sale deed dated 09.06.1967. This was executed by Sri Pedda Sangappa and Sri Chinna Sangappa. It is undisputed on both sides that by the time of this document both of them were alive. The original of this document was not filed, but only a certified copy was filed. The evidence of PW.1 was that they lost the original and

therefore they had to file only the certified copy. This non-filing of the original is objected to by the defendants during the trial as well as during the hearing of this appeal. It is in this regard one requires to notice Section 57(5) of the Registration Act, 1908, which reads as below:-

“57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries:-

(1)

(2)

(3)

(4)

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.”

12. One also shall notice Section 79 of the Indian Evidence Act, 1872, which reads as below:-

“79.Presumption as to genuineness of certified copies:- The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by Law declared to be admissible as evidence of any particular fact, and which

purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized thereto by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.”

13. Referring to these and other provisions of law, the Hon’ble Supreme Court of India in ***Appaiya v. Andimurthu @ Thangapandi***¹ held that in a suit of present nature production of certified copy of a registered sale deed is sufficient. In the case at hand, the executants being the ancestors of the appellants/defendants they must be holding the requisite material to show as to how Sri Pedda Sangappa and Sri Chinna Sangappa either subscribed their signatures or put their thumb impressions. They did not produce any material in that regard to show to the trial Court that such a document was not executed by them. Therefore, they failed to convince the trial Court regarding their challenge to this document.

14. Ex.A.4 is the original registered sale deed dated 27.03.1978. In **Prem Singh V. Birbal**² and in **Rattan Singh v. Nirmal Gill**³, the Hon'ble Supreme Court of India held that there is a presumption that a registered document *prima facie* would be valid in law. The onus of proof would be on a person who leads to rebut the presumption.

15. Ex.A.4-registered sale deed dated 27.03.1978 is an ancient document. 34 years after that document O.S.No.26 of 2012 was filed. It was filed by respondents/plaintiffs who could be said to be persons holding proper custody of the document going by the recitals in the document. Thus, when a person produces a document of 30 years old indicating the legitimate possession of such a document, Section 90 of the Indian Evidence Act applies and the provision reads as below:-

“90. Presumption as to documents thirty years old: –

Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in

¹2023 SCC OnLine SC 1183

²(2006) 5 SCC 353

³(2021) 15 SCC 300

the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation:– Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.”

16. As per the recitals in Ex.A.4, it was executed by defendant No.1 as well as defendant No.2 along with late Sri Pedda Sangappa. The law demands, it is for the persons opposing a registered conveyance to prove their case. The trial Court expected defendant No.1 and defendant No.2 to produce some evidence that they never participated in execution of such document. It further observed that it was well within the competence of defendant No.1 and defendant No.2 to seek opinion of an expert to support their claim. But they did not do it. Thus, observations made by the learned trial Court remain unanswered in terms of law. However, at this length of time at paragraph No.16 of the grounds of appeal, the appellants urge that they may be given an opportunity in this regard. This

Court finds no reason to accord any such opportunity as for a period of four long years the trial was pending before the trial Court and they did not avail of that opportunity.

17. This takes us to the question as to whether Ex.A.4-registered sale deed was also executed by Sri Pedda Sangappa or not since the contention is that he died by then. As per Ex.B.7 dated 18.08.2012, Sri Pedda Sangappa died on 15.03.1977. If that is correct, he could not have participated in execution of Ex.A.4 on 27.03.1978. Therefore, it is now necessary to see when Sri Pedda Sangappa died. A perusal of Ex.B.7 shows that for the first time the death of Sri B.Pedda Sangappa was registered on 18.08.2012. By then the suit was already pending and defendants also filed their written statements. The record would show that written statement was filed on 20.12.2012. Earlier to that, the defendants received Ex.A.12-notice dated 09.10.2011 from plaintiffs and they issued a reply notice dated 12.10.2011 as per Ex.B.3. Thus, prior to the issuance of Ex.B.7 and after the issuance of Ex.B.7, defendants had opportunity to say this fact of death of Sri Pedda Sangappa on 15.03.1977. Their reply notice and their written statement are absolutely silent on this. Thus, they

never put it to the knowledge of the plaintiffs at the time of commencement of the trial that their challenge on Ex.A.4 is rested on the death of Sri Pedda Sangappa. It is in such circumstances the learned trial Court rightly said that the defendants developed the new story based on Ex.B.7. It is for the defendants to tell the Court as to why the death of Sri Pedda Sangappa was not registered since 15.03.1977 to 18.08.2012 which is about 45 years. That certainly allows one to feel suspicious. It is precisely there the plaintiffs took pain of exhibiting Exs.A.14, 15 and 16. The purport of these documents is that defendant No.2 obtained this death certificate on a pretention that there was an insurance policy of Sri Pedda Sangappa in which he was a nominee and therefore he required the death certificate of Sri Pedda Sangappa. While cross-examining DW.2, an admission was elicited from this witness that there was no such insurance policy at all and he was never a nominee. Thus, falsehood was represented before public authorities in obtaining Ex.B.7. It is in that context of facts, learned trial Court did not put faith on Ex.B.7. Just by production of Ex.B.7 defendants/appellants cannot at this length of time argue that Sri Pedda Sangappa could not have executed Ex.A.4-sale deed. Be it noted that according to

appellants as well as respondents, Sri B.Pedda Sangappa died unmarried and issueless and intestate. Therefore, the true purport of the conveyance does not get effected by non-participation of Sri Pedda Sangappa. The trial Court rightly observed that defendants failed to adduce any evidence to rebut the presumption raised under Section 90 of the Indian Evidence Act to the effect that there was either impersonation or some other malpractice in getting Ex.A.4-sale deed. This Court finds that the approach of the learned trial Court and its assessment of evidence on record is in consonance with law and does not require any interference.

18. Another contention raised for appellants was defendant No.2 was a minor when Ex.A.4-registered sale deed was executed. On evidence learned trial Court recorded that defendant No.2 was a minor by then. However, in terms of Section 8 of the Hindu Minority and Guardianship Act, 1956, the natural guardian is entitled to convey the title on behalf of the minor but that shall be done after obtaining requisite permission from the Court. The provision further provides that if the Court permission was not obtained, the conveyance is voidable at the option of the minor. Article 60 of the Schedule

of the Limitation Act states that within three years after attaining majority the minor could sue for avoidance of such conveyance. It is not the case of appellants that defendant No.2 exercised that option and sued for avoidance of Ex.A.4. Learned trial Court properly recognized the principles of law and even tested the case of defendant No.2 under Article 65 of the Schedule of the Limitation Act and stated that from the date of conveyance in Ex.A.4 within 12 years he could have sued for avoidance of it and even that was not done by defendant No.2. It was for those reasons, learned trial Court approved the authenticity of Ex.A.4 and in this appeal the appellants failed to indicate any factual or legal error in it.

19. For the reasons stated above, both the points are held against the appellants.

20. In the result, this Appeal is dismissed. Consequently, the impugned judgment dated 22.04.2016 of learned Senior Civil Judge, Dharmavaram in O.S.No.26 of 2012 stands confirmed. Appellants shall bear their own costs and bear the costs of respondents in this appeal.

As a sequel, miscellaneous applications pending, if any,
shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 26.03.2024
Ivd

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

APPEAL SUIT No.878 of 2016

Date: 26.03.2024

Ivd